IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.930 OF 2003

Murlidhar Ganesh Karhadkar ...Appellant

vs.

Ajit V. Velangi & Ors. ...Respondents

Mr.A.V.Anturkar i/b Mr.Sangram P. Pawar for the Appellant
Mr.Rahul Kate i/b Mr.V.J.Kale for Respondent no.1
Mr.R.S.Apte with Mr.M.V.Limaye for Respondent No.2

CORAM: A.S.OKA,J.
DATE : MARCH 23, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the original Defendant No.2. The Respondent No.2-Defendant No.1 is a builder whose proprietor is related to the Appellant. It is not in dispute that the Respondent No.2 executed an agreement for sale in the year 1992 in favour of the Respondent No.1 in respect of the suit flat and the entire consideration of Rs.2,10,000/- has been paid by the Respondent No.1-Plaintiff to the Respondent No.2. The suit flat in respect of which the Agreement for sale was executed was allowed to be occupied by the Appellant herein by the Respondent No.2 by way of temporary accommodation as per the Agreement between the Appellant and Respondent No.2. The Respondent No.2 had agreed to give certain premises in the new building to the Appellant. Till the Appellant is placed in possession of the premises to which he is entitled to, he was allowed to occupy the suit flat by the Respondent No.2. It is not in dispute that the premises which the Respondent No.2 was

under obligation to make available to the Appellant were offered by the Respondent No.2 long back and the Respondent No.2 called upon the Appellant to vacate the suit flat.

2. In a suit for specific performance of the agreement filed by the Respondent No.1 against the Respondent No.2 and Appellant herein, decree for possession of the suit flat has been passed in favour of the Respondent No.1 and the Respondent No.2 has been directed to pay a compensation of Rs.67,500/- to the Respondent No.1-Plaintiff. The Decree passed by the Trial Court was challenged by the present Appellant by preferring an Appeal to the District Court. The said Appeal has been dismissed.

3. Shri Anturkar, learned Counsel for the Appellant submitted that there was no privity of contract between the Appellant and the Respondent No.1. He submitted that the causes of action, if any, available to the Respondent No.1 against the Appellant and the cause of action available to the Respondent No.1 against the Respondent No.2 were distinct and separate and the said causes of action could not have been clubbed in one suit. He submitted that the Trial Court specifically framed a issue on the said aspect. However, the Appellate court has not considered the the said aspect at all.

4. I have considered the submissions of Shri Anturkar. The Appellant is claiming through the Respondent No.2 who is the vendor of Respondent No.1. The Appellant is not claiming any independent right, title or interests to the suit flat. Therefore, even if there is no privity of contract between the

Appellant and the Respondent No.1, since the Appellant is claiming through the Respondent No.2 the suit filed by the Respondent No.1 against the Appellant was maintainable. The case of the Respondent No.1 was that the Respondent No.2 has allowed the Appellant to occupy the said flat temporarily though the Appellant has no right, title or interest therein. Therefore, the suit filed by the Respondent No.1 was maintainable against the Appellant.

5. In so far as mis-joinder of causes of action is concerned, from the Judgment of the Appellate Court it appears that the said contention was not specifically raised. What has been contended in the Appellate Court is that there is no privity of contract between the Appellant and the Respondent No.1 and therefore the suit was not maintainable. The said contention has been dealt with by the Appellate Court. The Appellate Court has extensively referred to the litigation between the Appellant, other members of his family and the Respondent No.2. The Appellate Court has also referred to the order of this Court in the said proceedings which records willingness of the Respondent No.2 to put the Appellant in possession of the other premises on the basis of agreement between the Appellant and the Respondent No.2. There is no misjoinder of causes of action. The Respondent No.2 is under the obligation to hand over the suit flat to the Respondent No.1. The Appellant is claiming through the Respondent No.2 and he has no independent right in respect of the suit flat.Considering all these aspects and considering the fact that the Respondent

No.1 has paid the entire consideration way back in the year 1992-1993, decree passed by the Trial Court has been confirmed.

6. There is no perversity in the Judgments and Decrees passed by the Courts below. No substantial question of law arises.

Second Appeal is dismissed with no order as to costs.

7. At this stage Shri Anturkar submits that the Respondent No.2 has not made available the accommodation which he was supposed to hand over to the Appellant and therefore reasonable time to vacate may be granted. The said request is opposed by the learned Counsel for the Respondent No.1 by contending that the Respondent No.1 is kept away from possession of the suit flat for twelve years.

8. Considering the facts and circumstances of the case, notwithstanding the dismissal of the Second Appeal, the Decree for possession shall not be executed against the Appellant for a period of six months from today subject to condition of the Appellant and all his adult family members filing usual undertakings in this Court within a period of three weeks from today. If the undertakings are not filed, decree for possession will become executable. It is made clear that even if the Respondent No.2 does not hand over the possession of the another premises to the Appellant within the said period of six months, the Appellant will be entitled to seek extension of time on that ground.

9. Parties to act upon an authenticated copy of this order.

JUDGE.